Exhibit 24 Part K

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc., et al.,

Civil Action No. 01-12257-PBS

Exhibit to the July 24, 2009, Declaration of George B. Henderson, II
In Support of United States' Common Memorandum of Law in Support of Cross-Motions for
Partial Summary Judgment and in Opposition to the Defendants' Motions for Summary
Judgment

Case 1:01-cv-12257-PBS Document 6310-35 Filed 07/24/09 Page 2 of 13

211/2000 - 8/6/2001

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1'N14	supersedes 77/11	

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18 (Pages 66 to 69)

7		_		7
	66		68	
1	discussed, yes.	1	amount?	Proceeds \$1.
2	Q. What do you recall about those	2	A. I'm still not following your question.	SHETTING TO
3	discussions?	3	Q. Well, there is a state the state gives	- Alexandra
4	A. Not much other than it is just probably	4	you a set budget for the pharmacy program. Is that	
5	we normally go around and do a roundtable and	5	correct or not?	
6	discuss what our reimbursement rate is and that	6	A. I don't believe so.	2007
7	kind of thing. So when I say discussed, that's	7	Q. Okay.	Transaction of the Control of the Co
8	normally what we do. How many scripts you paid for	8	A. And that is a budget question to ask.	district the second sec
9	a year, what is your budget, that kind of thing.	9	Q. Okay. Can you give me anymore insight	
10	Q. When you say what is your budget, what do	10	into how the Postlethwaite study was used to	and the second
11	you mean by that?	11	establish fees on the dispensing fee amounts?	No see the see
12	A. What the Medicaid programs spend on	12	A. I will tell you what I remember, which is	A
13	expenditures.	13	not very much, but I believe that the dispensing	
14	Q. From 1991 through 2001, which is the	1.4	fee was a lower amount prior to the Postlethwaite	- C.
15	operative time period for which the United States	15	study, and the Postlethwaite study came out and	an understand
16	is seeking damages from Abbott, how was the	16	determined whatever the fee was going to be at the	A NAME OF THE OWNER OWNE
17	dispensing fee set? How was the number calculated?	17	time and allowed for some type of factor to be	Classical Control of C
18	MR. FAUCI: Objection, form.	18	applied on an annual basis to increase the	
19	THE WITNESS: In the State of Louisiana?	19	dispensing fee. And it subsequently was frozen in	
20	BY MR. TORBORG	20	some year, and I don't remember the year, at \$5.77.	『く米 DF
21	Q. Yes.	21	Q. Why was it frozen at \$5.77?	Deeng
22	A. As I recall, Postlethwaite & Netterville	22	A. Probably because of budgetary factors at	745.11
	67		69	beginning
				* DF \$ \$5.77 beginning 1994 (pp. 68-7
1 2	did a dispensing cost survey. Subsequent to that,	1 2	the time. Q. If I can ask you to take out Exhibit 326	l in n
11	Myers and Stauffer did a dispensing cost survey.			(pp. 60-7
3 4	Q. How were the result of the survey used in	3	in the binders there. Probably in the second box there to your right.	
5	coming up with the dispensing fee amount?	5	MR. TORBORG: For the record, what was marked	on paragraphic
6	MR. FAUCI: Objection, form. THE WITNESS: I don't recall exactly how that	6	previously as Abbott Exhibit 326 is a cover page of	
7	occurred, but the results were used.	7	certain pages out of a publication that was done by	
11	BY MR. TORBORG	8	the National Pharmaceutical Council, in particular,	
8 9	Q. What impact does the state budget have on	9	we have taken out pages that set forth the	Page 1
10	the dispensing fee amounts that are paid?	10	dispensing fee and ingredient reimbursement basis	subodiffe.
H	MR. FAUCI: Objection.	11	for the years 1990 through 2006 and made them into	Provide Spirit
11 12	THE WITNESS: I'm not sure I understand your	12	one exhibit.	Section 19
13	question.	13	BY MR, TORBORG	C. sainteen C.
14	BY MR. TORBORG	14	Q. Ms. Terrebonne, are you familiar with the	3370
15	Q. Does the state budget have a set amount	15	publication that is prepared by the National	W. San
16	for dispensing fees?	16	Pharmaceutical Council?	E-STR HESS
17	MR. FAUCI: Same objection.	17	A. Yes.	2000
18	THE WITNESS: I would say no.	18	Q. You have had occasion to reference that	The control of the co
19	BY MR. TORBORG	19	in your work?	7
20	Q. What the state budget provides for the	20	A. Yes.	No. of the last of
21	Louisiana Medicaid pharmacy program, what impact,	21	Q. If we look at if we start with the	AND
22	if any, does that have on the dispensing fee	22	first page in the exhibit, this is titled "Medicaid	Control of the Contro
		g die die	mor page in the eathert, and id title. Predictie	118

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19 (Pages 70 to 73)

1			
	70		72
1	Drug Reimbursement Report 1990." Under Louisiana,	1	A. Okay. Yes.
2	do we see the dispensing fee there of \$4.41?	2	Q. There it seems to indicate for this year,
3	A. Yes.	3	2003, a dispensing fee of \$4.45 average to \$5.77.
4	Q. And then if you go to the next if you	4	Do you see that?
5	go two more pages, there is one also entitled	5	A. Yes.
6	"Medicaid Drug Reimbursement Report for 1990," but	6	Q. Do you know what that means?
7	it has MPC1991 in the upper left-hand corner. It	7	A. I have got \$4.45 is our average paid
8	says Louisiana, \$4.61. Do you see that?	8	dispensing fee.
9	A. Yes.	9	Q. And the maximum number would \$5.77?
10	Q. And if we skip two more pages, for the	10	A. Yes.
11	1992 report, it shows the dispensing fee for	11	Q. Who would get \$4.45 and who would get
12	Louisiana of \$5. Do you see that?	12	\$5.77?
13	A. Yes.	13	A. When providers bill, they bill their
14	Q. And 1993, if you skip a couple more past,	14	usual and customary charge, so they don't always
15	it shows \$5.30. Do you see that?	15	bill \$5.77.
16	A. Yes.	16	Q. Who gets the \$4.45?
17	Q. Skip another couple of pages, 1994, it	17	A. That is the average when you look at the
18	shows the dispensing fee at \$5.77. Do you see that?	18	dispensing fee portion divided by the number of
19	A. Yes.	19	claims we paid.
20	Q. And then if we go to the next page, you	20	Q. I see. If somebody let me back up.
21	will see that it is still \$5.77?	21	In determining how much to pay a provider
22	A. Yes.	22	to dispense drugs to a Medicaid beneficiary, you
	71.		73
1	Q. Does that refresh your recollection at	1	pay ingredient cost and dispensing fee. Correct?
2	all about when it was that the dispensing fee was	2	A. Correct.
3	frozen?	3	Q. And the ingredient cost portion would be
4	A. Yes.	4	the lower of a series of things. Correct?
5	Q. And your recollection as refreshed is	5	A. Right.
6	what?	6	Q. If the lower if the provider's usual
7	A. 1994.	7	and customary charge is the lowest of that
8	Q. If you look through the report, I think	8	criteria, what dispensing fee would they be paid?
9	you will see it stays at \$5.77 through 2002, and in	9	A. I don't understand your question.
10	2003, if I could ask you to go to the third page	10	Q. Okay. If Louisiana reimburses on usual
11	from the end of the exhibit, I wanted to ask you a	11	and customary charge, they don't pay a separate
12	question about something there.	12	dispensing fee; is that right? Or do they?
13	See there, under Louisiana dispensing	13	A. They will go through the calculation of
14	fee, it shows \$4.45, and in parentheses it says	14	the ingredient cost, and whatever was remaining,
15	"(AVG)," and I assume that means average, to \$5.77.	15	they would pay up to \$5.77. But if you charged
16	Do you see that?	16	less, we would pay less.
17	A. No. I'm sorry	17	Q. Has that been the case throughout 1991
18	Q. It's the page in the upper right-hand	18	through 2001?
19	corner, "Pharmaceutical Benefits, 2003."	19	A. Yes.
20	You know what? You have double sided and	20	Q. Do you know why the dispensing fee was
21	I don't. So I think if you go to the upper	21	frozen in 1994 at \$5.77?
22	right-hand corner, see where it says 2003?	22	A. I don't recall exactly, but I would
AMERICAN MANAGEMENT			

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"Modifie	ed" means the lower of the following applicable lim	its:			/	
desi	P minus either 13.5% for independent pharmacies ignation) or 15% for chain pharmacies (more than finership) for: Other Drugs not subject to LMAC limits; and Drugs exempt from LMAC or Federal Upper Limits	ifteen Medic	aid enrolled ph	narmacies under c	armacy ommon	
LM	AC limits on multiple source drugs established by M	Medicaid of	Louisiana as se	et forth below; an	ıd	
Fed	leral Upper Limits on multiple source drugs establis.	shed by HCF	A as set forth	below.		
"Maximu drugs as utilized.	um Allowable Overhead Cost" means the expense indetermined by Medicaid of Louisiana. Section V.	curred by ph . of Item 12.	armacy provide a. describes th	ers in dispensing o e complete metho	covered odology	
B. Federal U	Upper Limits (FUL) For Multiple Source Drugs	, , , , , , , , , , , , , , , , , , ,				
	ept for drugs subject to "Physician Certification", NATE (INTERNATION) REPORTED THE PROPERTY OF THE PROPERTY O					
(a)	All of the formulations of the drug approved by the evaluated as the rapeutically equivalent in the most	he Food and t current editi	Drug Adminis ion of their pub	tration (FDA) has lication, Approve	ve been ed Drug	
•						
Proposition of the last of the						
***************************************	(-03) Approval Date <u>0</u> 2-2	2-02	Effecti	ve Date <u>08-0</u>	P-01	
Supersedes TN# OC	0-08					

March 31, 2008

18 (Pages 66 to 69)

		Ī		1.
	66		68	Orași Companii de
1	discussed, yes.	1	amount?	56155
2	Q. What do you recall about those	2	A. I'm still not following your question.	
3	discussions?	3	Q. Well, there is a state the state gives	
4	A. Not much other than it is just probably	4	you a set budget for the pharmacy program. Is that	CONTRACTOR
5	we normally go around and do a roundtable and	5	correct or not?	The state of the s
6	discuss what our reimbursement rate is and that	6	A. I don't believe so.	3 or provided
7	kind of thing. So when I say discussed, that's	7	Q. Okay.	
8	normally what we do. How many scripts you paid for	8	A. And that is a budget question to ask.	
9	a year, what is your budget, that kind of thing.	9	Q. Okay. Can you give me anymore insight	200
10	Q. When you say what is your budget, what do	10	into how the Postlethwaite study was used to	Constant
11	you mean by that?	11	establish fees on the dispensing fee amounts?	
12	A. What the Medicaid programs spend on	12	A. I will tell you what I remember, which is	24 (17 A A A A A A A A A A A A A A A A A A A
13	expenditures.	13	not very much, but I believe that the dispensing	
14	Q. From 1991 through 2001, which is the	14	fee was a lower amount prior to the Postlethwaite	1979 A 2020
15	operative time period for which the United States	15	study, and the Postlethwaite study came out and	William P.
16	is seeking damages from Abbott, how was the	16	determined whatever the fee was going to be at the	
17	dispensing fee set? How was the number calculated?	17	time and allowed for some type of factor to be	- Posterior - Post
18	MR. FAUCI: Objection, form.	18	applied on an annual basis to increase the	
19	THE WITNESS: In the State of Louisiana?	19	dispensing fee. And it subsequently was frozen in	 \(\)
20	BY MR. TORBORG	20	some year, and I don't remember the year, at \$5.77.	 \
21	Q. Yes.	21	Q. Why was it frozen at \$5.77?	Mino
22	A. As I recall, Postlethwaite & Netterville	22	A. Probably because of budgetary factors at	
	67	or equation to real way	69	#5:77
1	did a dispensing cost survey. Subsequent to that,	1	the time.	beginning
2	Myers and Stauffer did a dispensing cost survey.	2	Q. If I can ask you to take out Exhibit 326	
3	Q. How were the result of the survey used in	3	in the binders there. Probably in the second box	1994
4	coming up with the dispensing fee amount?	4	there to your right.	1 (200)
5	MR. FAUCI: Objection, form.	5	MR. TORBORG: For the record, what was marked	(pp. 68-73)
6	THE WITNESS: I don't recall exactly how that	6	previously as Abbott Exhibit 326 is a cover page of	*
7	occurred, but the results were used.	7	certain pages out of a publication that was done by	
8	BY MR. TORBORG	8	the National Pharmaceutical Council, in particular,	
9	Q. What impact does the state budget have on	9	we have taken out pages that set forth the	Total Control of the
10	the dispensing fee amounts that are paid?	10	dispensing fee and ingredient reimbursement basis	75 100 100 100 100 100 100 100 100 100 10
	MR. FAUCI: Objection.	11	for the years 1990 through 2006 and made them into	
12	THE WITNESS: I'm not sure I understand your	12	one exhibit.	% A 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
11 12 13	question.	13	BY MR. TORBORG	3
	BY MR. TORBORG	14	Q. Ms. Terrebonne, are you familiar with the	
14 15	Q. Does the state budget have a set amount	15	publication that is prepared by the National	Š
16	for dispensing fees?	16	Pharmaceutical Council?	To the state of th
17	MR. FAUCI: Same objection.	17	A. Yes.	P
18	THE WITNESS: I would say no.	18	Q. You have had occasion to reference that	
19	BY MR. TORBORG	19	in your work?	the tight or
20	Q. What the state budget provides for the	20	A. Yes.	Per angle
21	Louisiana Medicaid pharmacy program, what impact,	21	Q. If we look at if we start with the	
11		1		
22	if any, does that have on the dispensing fee	22	first page in the exhibit, this is titled "Medicaid	[[4

March 31, 2008

19 (Pages 70 to 73)

	70		72
1	Drug Reimbursement Report 1990." Under Louisiana,	1	A. Okay. Yes.
2	do we see the dispensing fee there of \$4.41?	2	Q. There it seems to indicate for this year,
3	A. Yes.	3	2003, a dispensing fee of \$4.45 average to \$5.77.
4	Q. And then if you go to the next if you	4	Do you see that?
5	go two more pages, there is one also entitled	5	A. Yes.
6	"Medicaid Drug Reimbursement Report for 1990," but	6	Q. Do you know what that means?
7	it has MPC1991 in the upper left-hand corner. It	7	A. I have got \$4.45 is our average paid
8	says Louisiana, \$4.61. Do you see that?	8	dispensing fee.
9	A. Yes.	9	Q. And the maximum number would \$5.77?
10	Q. And if we skip two more pages, for the	10	A. Yes.
11	1992 report, it shows the dispensing fee for	11	Q. Who would get \$4.45 and who would get
12	Louisiana of \$5. Do you see that?	12	\$5.77?
13	A. Yes.	13	A. When providers bill, they bill their
14	Q. And 1993, if you skip a couple more past,	14	usual and customary charge, so they don't always
15	it shows \$5.30. Do you see that?	15	bill \$5.77.
16	A. Yes.	16	Q. Who gets the \$4.45?
17	Q. Skip another couple of pages, 1994, it	17	A. That is the average when you look at the
18	shows the dispensing fee at \$5.77. Do you see that?	18	dispensing fee portion divided by the number of
II.	A. Yes,	19	claims we paid.
19 20	Q. And then if we go to the next page, you	20	Q. I see. If somebody let me back up.
21	will see that it is still \$5.77?	21	In determining how much to pay a provider
22	A. Yes.	22	to dispense drugs to a Medicaid beneficiary, you
	Average and the control of the contr		to dispense drugs to a friedlesia beneficiary, you
	71		73
1	Q. Does that refresh your recollection at	1	pay ingredient cost and dispensing fee. Correct?
2	all about when it was that the dispensing fee was	2	A. Correct.
3	frozen?	3	Q. And the ingredient cost portion would be
4	A. Yes.	4	the lower of a series of things. Correct?
5	Q. And your recollection as refreshed is	5	A. Right.
6	what?	6	Q. If the lower if the provider's usual
7	A. 1994.	7	and customary charge is the lowest of that
8	Q. If you look through the report, I think	8	criteria, what dispensing fee would they be paid?
9	you will see it stays at \$5.77 through 2002, and in	9	A. I don't understand your question.
10	2003, if I could ask you to go to the third page	10	Q. Okay. If Louisiana reimburses on usual
11	from the end of the exhibit, I wanted to ask you a	11	and customary charge, they don't pay a separate
12	question about something there.	12	dispensing fee; is that right? Or do they?
1.3	See there, under Louisiana dispensing	13	A. They will go through the calculation of
14	fee, it shows \$4.45, and in parentheses it says	14	the ingredient cost, and whatever was remaining,
15	"(AVG)," and I assume that means average, to \$5.77.	15	they would pay up to \$5.77. But if you charged
16	Do you see that?	16	less, we would pay less.
17	A. No. I'm sorry	17	Q. Has that been the case throughout 1991
18	Q. It's the page in the upper right-hand	18	through 2001?
19	corner, "Pharmaceutical Benefits, 2003."	19	A. Yes.
20	You know what? You have double sided and	20	Q. Do you know why the dispensing fee was
21	I don't. So I think if you go to the upper	21	frozen in 1994 at \$5.77?
	right-hand corner, see where it says 2003?	22	A. I don't recall exactly, but I would

(4/20/2009) Judith Becherer - Re: Medicaid Pharmacy Pricing Follow-Up

Page 1

From:

"Rachel Broussard" <RBroussa@dhh.la.gov>

To:

"Judith Becherer" < Jbecherer@MSLC.COM>

CC:

"M J TERREBONNE" <MTERREBO.MVA-PRIM-PO01.DHH-BTR-DO01@dhh.la.gov>

Date:

10/21/2008 10:49 AM

Subject:

Re: Medicaid Pharmacy Pricing Follow-Up

** Low Priority **

Judith,

Louisiana Medicaid reimburses TPN at 80% of the Medicare Fee Schedule amount or billed charges, whichever is the lesser amount.

TPN supplies are reimbursed at 70% of the Medicare Fee Schedule amount or billed charges, whichever is the lesser amount.

TPN infusion pumps are reimbursed at 70% of the Medicare Fee Schedule amount or billed charges, whichever is the lesser amount.

Thanks,

Rachel Broussard, RPh Louisiana Medicaid Pharmacy Benefits Management Unit 225-342-9768 225-342-1980 (fax) rbroussa@dhh.la.gov

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>>> "Judith Becherer" <Jbecherer@MSLC.COM> 10/13/2008~6:46~PM >>> MJ,

Thank you for the information. Can you please advise how TPN are reimbursed and during what time period(s)? Regarding your question about U.S. DOJ pricing, DOJ prices were implemented by a number of states after a DOJ study that identified specific revised AWP prices for some drugs.

Once I hear from you, I will complete the revision and return it to you for final approval. Judith

Judith E. Becherer Health Policy Consultant Myers and Stauffer, LC Certified Public Accountants 9265 Counselors Row, Suite 200 Indianapolis, Indiana 46240-6419 See next page for start Case 1:01-cv-12257-PBS Document 6310-35 Filed 07/24/09 Page 11 of 13

Print View Page 1 of 8

From:

"Rachel Broussard" < RBroussa@dhh.la.gov>

To:

"Judith Becherer" < jbecherer@MSLC.COM>

CC:

"M J TERREBONNE" <MTERREBO@dhh.la.gov>

Date:

Thursday - October 23, 2008 2:40 PM

Subject:

Re: Medicaid Pharmacy Pricing Follow-Up

** Low Priority **

Judith,

The policy was effective in the pharmacy program effective 7-1-2005. Prior to 7-1-2005, Louisiana Medicaid DME program handled the TPN.

* FN#6

Thanks,

Rachel Broussard, RPh Louisiana Medicaid Pharmacy Benefits Management Unit 225-342-9768 225-342-1980 (fax) rbroussa@dhh.la.gov

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>>> "Judith Becherer" <jbecherer@MSLC.COM> 10/21/2008 10:28 AM >>> Can you please advise when this policy became effective, and what if any policy preceded it (and for what time periods?). Thanks, Judith

March 31, 2008

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- Q. Well, the AMP FUL rule has not been
- implemented, correct?
- A. Correct.
- Q. There is an injunction in federal court
- ⁵ preventing it, correct?
- 6 A. Correct.
- 7 Q. Today, what is Louisiana paying as a
- 8 dispensing fee?
- 9 A. The maximum is \$5.77.
- Q. So, because CMS has not approved it, you
- have not implemented that in the program?
- A. Correct.
- Q. The legislature told you not to implement
- it until you got approval from CMS?
- A. Correct.
- Q. Has CMS indicated to you that they may
- approve the plan if the EAP rule goes into effect?
- 18 A. They have not.
- Q. Have they drawn -- have they stated to
- you that approval of your increase in dispensing
- fees would be tied to whether or not the AMP rule
- goes into effect?

Present

March 31, 2008

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- A. I do not.
- Q. In this time frame?
- A. I do not.
- Q. It has been something that has been
- discussed more recently in connection with the AMP
- 6 proposal?
- A. Have dispensing fees been discussed more
- 8 recently? Yes.
- 9 Q. Do you recall conversations earlier than
- that about the potential need to reduce the
- dispensing fee if there is a reduction in the
- 12 ingredient side?
- A. Not recently.
- Q. Something that could have been discussed,
- you just don't recall?
- A. We haven't discussed it in quite some
- time, since the implementation of the \$5.77 and the
- 18 AWM minus 13 and a half and 15.
- Q. But here we have -- this is a
- communication amongst state pharmacies that talks
- directly about the potential need to increase the
- dispensing fee if reimbursement is reduced to AAC.

Present EAC